

January 24, 2006

Priscilla Hogan, MAA
Assessor/Administrator
Milford Board of Assessors
52 Main St.
Milford, MA 01757

Re: New England Mountain Bike Association, Inc.
Our File No. 2005-406

Dear Ms. Hogan:

I am writing in regard to your question whether certain real property of the New England Mountain Bike Association, Inc. ("NEMBA") qualifies for a property tax exemption.

Based on the information you provided to us, it is our understanding that NEMBA is a Massachusetts Chapter 180 corporation with an Internal Revenue Code federal classification as a §501(c)(3) corporation. NEMBA was established to promote safe, responsible, environmentally sensitive off-road riding ethics within the mountain bike community. NEMBA owns 47 acres of open space in Milford. On its Form 3ABC, NEMBA indicated that its property is open to the public and is used for education and preservation.

You wrote that you are questioning NEMBA's charitable status for the purpose of receiving a property tax exemption for this land. As you know, the requisites, which a charitable organization must satisfy in order to qualify for a tax exemption on real property, are set out in Chapter 59, Section 5, Clause Third of the General Laws. This provision allows an exemption from property tax assessment upon:

"real estate owned or held in trust for a charitable organization and occupied by it or its officers for the purposes for which it is organized or by another charitable organization or organizations or its or their officers for the purposes of such other charitable organization or organizations."

This statutory provision sets out three, discrete requisites, all of which must be satisfied in order for real property to qualify for exempt status. First, the organization must be a charity. Secondly, the charitable organization must own the property. And finally, the charitable organization or some other charitable organization must occupy the property for a charitable purpose.

Non-profit status alone does not make an organization charitable. Thus, the question here is whether the dominant purposes and actual activities of NEMBA are for the public good and benefit a relatively large class or indefinite group from among the public as opposed to providing specific benefits for a limited group. *See Massachusetts Medical Society v. Assessors of Boston*, 340 Mass. 327, 332 (1960). Massachusetts courts have focused mostly on public access in determining whether a charitable organization benefits the general public, rather than just a particular limited group of people. *Compare Staman v. Board of Assessors of Chatham*, 351 Mass. 479 (1966); *Town of Milton v. Ladd*, 348 Mass. 762 (1965); *Assessors of Quincy v. Cunningham Foundation*, 305 Mass. 411 (1940) with *Nature*

Preserve, Inc. v. Board of Assessors of the Town of Pembroke, Appellate Tax Board Docket No. F246663 (September 25, 2000); *Animal Rescue League v. Board of Assessors of Boston*, Appellate Tax Board Docket No. F246649 (February 25, 2000); *Marshfield Rod & Gun Club, Inc. v. Assessors of the Town of Marshfield*, Appellate Tax Board Docket Nos. 242961-242966 (November 20, 1998).

Evidence of the dominant purpose can come from many sources. The Articles of Organization and by-laws are relevant, as are the activities of the organization. *See e.g., Assessors of Boston v. Garland Sch. of Home Making*, 296 Mass. 378, 384 (1937). In addition, the methods of administration, the nature of the actual work performed, the character of the services rendered, and the use and occupation of the property also have been frequently considered in determining and defining institutions that come within the exemption. *See Workmen's Circle Educational Center of Springfield v. Assessors of Springfield*, 314 Mass. 616, 618 (1943).

The documentation submitted provides a good overview of NEMBA's activities and the nature of the actual work it performs. NEMBA educates mountain bicyclists to ride responsibly and steward open spaces. To that end, NEMBA claims to provide free and open access to its property, recreational opportunities and education on trail construction and maintenance. Based on this information, it seems likely that NEMBA's dominant purposes and actual activities would be considered charitable in nature.

However, even if NEMBA is considered a charitable organization, it still must show that the use of the 47 acres it owns in Milford is in furtherance of its stated charitable purposes. *See Nature Preserve, Inc. v. Board of Assessors of the Town of Pembroke*, Appellate Tax Board Docket No. F246663 (September 25, 2000); *see also Animal Rescue League v. Board of Assessors of Boston*, Appellate Tax Board Docket No. F246649 (February 25, 2000). Simply preserving property in its natural state is not enough to satisfy the requirement of "occupying" the property within the meaning of the statute. *Id.* NEMBA must show that it is actively using its property to promote recreation, conservation and education.

In our view, the decision in *Assessors of Dover v. Dominican Fathers Province of St. Joseph*, 334 Mass. 530 (1956) established a standard for property with respect to occupancy for Clause Third purposes. The use must be "so substantial that for all practical purposes the property could be said to be occupied for the purposes for which the taxpayer was organized." *Dominican Fathers Province of St. Joseph*, 334 Mass. at 540-41. To this end, we have advised that while the use of a building by a charity does not have to be intensive, it must be substantial enough that the building is considered dedicated to the charitable purpose. The courts and the Appellate Tax Board ("ATB") have granted even more latitude on the occupancy of land for Clause Third purposes.¹ An entire area may be considered necessary to fulfill the purposes of a charitable organization even if some portion remains unoccupied or infrequently used. *Assessors of Dover*, 334 Mass. at 541; *see also Massachusetts General Hospital v. Somerville*, 101 Mass. 319, 322 (1869); *Emerson v. Milton Academy*, 185 Mass. 414, 415 (1904).

NEMBA claims to use its Milford property for: (i) preservation of open space; (ii) free and open access for non-motorized recreation; (iii) trail construction events; and (iv) teaching the fundamentals of trail maintenance. It would be important to evaluate these uses against any non-charitable uses that NEMBA may also make of the property in order to determine whether the dominant use of the property is charitable. However, in our view, whether NEMBA's stated activities and actual uses are "so substantial

¹ *See e.g., Assessors of Dover*, 334 Mass. at 540-41 (where the Supreme Judicial Court held that a seminary with almost eighty acres of land was totally exempt, notwithstanding that the seminary generally used only a small portion of the land) and *The Trustees of Reservations v. Board of Assessors of the Town of Windsor*, (docket # 159046, 1991) (where the ATB cited *Assessors of Dover* in finding that a house located on a 3,000 acre farm, owned by a non-profit conservation organization, was exempt since the house was an integral part of the viewscape of the farm even though it mainly was used for storage).

that for all practical purposes the property could be said to be occupied for the purposes” of promoting recreation, conservation and education for the benefit of the general public is a determination that the board of assessors must initially make. To the extent that NEMBA disagrees with the determination made by the assessors, it may appeal to the Board of Assessors and the ATB, if necessary.

We hope that this information is helpful. If you have any additional questions concerning this matter, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read 'K. Colleary', written over the closing 'yours,'.

Kathleen Colleary
Chief, Bureau of Municipal Finance Law

KC/mcm